

FILE

SEP 26 1997

**SECRETARY, BOARD OF
OIL, GAS & MINING**

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

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IN THE MATTER OF THE	:	FINDINGS OF FACT,
PETITION FILED BY THE	:	CONCLUSIONS OF LAW
DIVISION OF OIL, GAS AND	:	AND ORDER TO RECLAIM OR
MINING FOR AN ORDER	:	TO POST AN INTERIM SURETY
REQUIRING IMMEDIATE	:	
RECLAMATION OF THE GROUSE	:	
CREEK QUARRY FROM UTAH	:	DOCKET NO. 97-016
BUILDING STONE SUPPLY, BOX	:	CAUSE NO. M/003/031
ELDER COUNTY, UTAH.	:	

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This cause came on for hearing before the Utah Board of Oil, Gas and Mining (the "Board") on Wednesday, September 24, 1997, at the hour of 10:00 a.m. The following Board members were present and participated at the hearing: Thomas B. Faddies, Acting Chairman, Jay L. Christensen, Raymond Murray, Elise L. Erler, Wayne Allan Mashburn, and Stephanie Cartwright. Board Chairman Dave D. Lauriski was unable to attend.

Patrick J. O'Hara, Assistant Attorney General, State of Utah, served as legal counsel to the Board. The Division of Oil, Gas & Mining (the "Division") was represented by Daniel G. Moquin, Assistant Attorney General, State of Utah.

Testifying on behalf of the Division were Wayne Hedberg, Division Mineral Program, Permit Supervisor and Lynn Kunzler, Division Minerals Program, Senior Reclamation Specialist.

The Operators of the Grouse Creek Quarry (the "Mine") at issue in this case are Mr. William Bown and Mr. Preston Bown, two natural persons who reside in Utah and who jointly do business together as a Utah general partnership with unlimited personal liability under the assumed name of "Utah Building Stone Supply" (hereinafter the "Bowns").¹

The Board, having considered the testimony presented and the numerous exhibits received at the hearing, being fully advised, and for good cause appearing, hereby makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Operators of the Grouse Creek Quarry (the "Mine") at issue in this case are Mr. William Bown and Mr. Preston Bown, two natural

¹The separate but related matter between the Division and the Bowns, Docket No. 97-017, Cause No. M/003/031, concerning the Bowns' alleged willful and knowing violation of the Board's Cessation Order dated May 28, 1997, was not decided at the hearing on September 24, 1997, nor is that separate issue resolved by this Order. This Order only concerns Docket No. 97-016. Counsel for the Division has informed the Board that the Bowns and the Division agreed to have Docket No. 97-017 heard at the Board's hearing on October 22, 1997, and so it shall be heard at that time. The Board expects the Bowns to be at that hearing.

persons who jointly do business together as a Utah general partnership with unlimited personal liability under the joint assumed name of "Utah Building Stone Supply" (the "Bowns" or the "Operators").

2. The Mine is located in portions of Sections 2, 3, 4, 10, and 11, Township 12 North, Range 17 West; and Sections 34 and 35, Township 13 North, Range 17 West, Salt Lake Base and Meridian, Box Elder County, Utah.

3. The Board finds that the Secretary of the Board mailed notice of the hearing to each of the Bowns, but neither of them appeared at the hearing in person or through counsel.

4. The Board finds that the Bowns did not receive advance permission from the Board to skip the hearing, so their absence was not excused.

5. No witnesses appeared on behalf of the Bowns, and no affidavits or memoranda were filed by the Bowns in opposition to the Division's Request for Agency Action which gave rise to the hearing.

6. By engaging in mining operations at the Mine, the Bowns have disturbed an area of land of not less than approximately twenty-five acres, so the Mine is a Large Mining Operation ("LMO").

7. The Board finds that the Mine has never been approved as a lawful LMO by the Division or the Board.

8. The Board finds that the Bowns are operating a completely unbonded LMO.

9. The Board finds that extensive administrative resources have been expended, so far without success, to bring the Bowns into compliance with the mining laws of the State of Utah, as set forth below.

10. On January 21, 1997, in a Cessation Order, or "CO", the Division staff ordered the Operator immediately to suspend all mining operations at the Mine until a "Notice of Intention ("NOI") is (a) filed by the Bowns with the Division and (b) approved by the Division.

11. The Bowns appealed the CO to the Director of the Division, who held an informal adjudication January 27, 1997, at which the Bowns were present in person. Thereafter, on March 25, 1997, Division Director James W. Carter affirmed the CO by issuing detailed written, "Findings of Fact, Conclusion of Law and Order" (the "Director's CO Ruling"). The Director expressly held that the January 21, 1997 CO would remain in effect until the Bowns obtained an approved NOI on the LMO at the Mine, and that the Bowns may not lawfully remove any minerals from the Mine until the NOI is approved by the Division and a proper surety is posted by the Bowns.

12. The Bowns filed an appeal to the Board in an effort to overturn

the Director's CO Ruling. The Bowns' appeal was styled as, In the Matter of the Request for Hearing of the Appeal of the Agency Action to Enforce Violated Mineral Rules, Utah Building Supply, Grouse Creek Operations, Box Elder County, Utah, Board Docket No. 97-007, Cause No. M/003/031 (the "CO Appeal").

13. On May 28, 1997, the Board, acting on a Stipulation and Motion jointly filed with the Board by the Division and the Bowns, entered an Order dismissing the Bowns' CO Appeal with prejudice and fully affirming the original CO and the Director's CO Ruling (the "Board CO"). The Secretary of the Board mailed the Board CO to the Bowns. No appeal was taken from the Board CO, because the Board CO was based on a stipulation, and the Board has not to date altered or amended the Board CO. Therefore, the Board CO is still final, absolute and binding on the Bowns as of the date this Order is issued.

14. As of the date hereof, the Board finds that the Bowns, without lawful justification, still have not submitted to the Division a satisfactory and complete NOI for their LMO at the Mine, though they have an absolute legal duty to do so under Title 40, Chapter 8 of the Utah Code, and the implementing regulations.

15. Based on the un-rebutted testimony of Messrs. Kunzler and

Hedberg, the Board finds that the NOI filings with the Division to date by the Bowns have been entirely superficial, inadequate and unsatisfactory under all the circumstances applicable to the LMO at the Mine.

16. The Board finds that the Bowns, without lawful justification, still have not submitted to the Division a satisfactory reclamation surety bond in a form and amount satisfactory to the Board, though they have an absolute legal duty to do so under Title 40, Chapter 8 of the Utah Code, and the implementing regulations.

17. The Division's best interim estimate of the cost to reclaim the Mine is \$500 per acre for each of the 25 acres disturbance, or \$12,500. The Division arrived at the interim estimate without the benefit of a proper submittal of LMO NOI information from the Bowns, so the Division's final reclamation estimate could be higher or lower if the Bowns do ultimately cure their deficient filing, or the Division otherwise obtains the required information about the Mine.

18. For present purposes, the Board finds that the Division's \$12,500 estimate of the proper interim bond amount is a reasonable interim estimate given the information available at this time. As more information becomes available, the Board may revise the bond amount to a higher or lower amount.

19. The Board finds that the Bowns have not submitted the information required to develop a proper reclamation plan at the Mine in compliance with Utah law, and that their failure to submit the requisite information as required by law is entirely unjustified and unexcused. However, based on the limited information available to the Division at the present time, the Board finds that the Division has developed a reasonable partial plan of reclamation to reduce the disturbed acreage at the Mine from about 25 acres to five acres or less (the "Small Mine Concept"). The Small Mine Concept is described more particularly in that certain oversized, color-coded map prepared by the Division entitled, "Utah Building Stone Grouse Creek Quarry Operations" (the "Reclamation Map"), and is further explained below in this Order. A true and correct copy of the Reclamation Map is attached hereto as Exhibit A, and is hereby incorporated by reference.

CONCLUSIONS OF LAW

1. The Board CO issued May 28, 1997 is still binding on the Bowns, including without limitation the prohibition stated therein on the removal of minerals materials from the Grouse Creek Quarry. Unless and until the Bowns either (1) secure an approved NOI on the existing LMO at Mine, and post an acceptable reclamation surety bond on the LMO, or (2) reclaim sufficient acres to

reduce the disturbed acreage at the Mine to 5 acres or less, the removal of any mineral materials by the Bowns from the Mine shall constitute a willful and knowing violation of the Utah Mined Land Reclamation Act, the Board CO Order, and this Order.

2. The Board finds as a matter of law that due and regular notice of the time, place and purpose of the hearing was properly given to all interested parties and in the form and manner as required by law and regulations of the Board and Division, particularly since the Notice of Hearing was mailed directly to the Bowns.

3. Pursuant to Utah Admin. Code R641-104-136.500, the Division is entitled to a default judgment and the other relief granted herein due to the unexcused failure of the Bowns to appear at said hearing, either in person or through counsel. The Board is quite concerned when the Bowns--two Operators subject to the jurisdiction of the Division and the Board--simply fail to show up at a duly noticed Board hearing, particularly given the serious nature of the Operators' sustained and on-going unexcused non-compliance with fundamental requirements of the Utah Mined Land Reclamation Act.

4. In violation of law, the Bowns have operated a LMO at the Mine without (a) receiving Division approval of its NOI as required by Utah Code

Ann. § 40-8-13 (1953, as amended) and (b) posting a reclamation surety bond in a form and amount acceptable to the Board as required by Utah Code Ann. § 40-8-14 (1953, as amended).

5. The Bowns have failed to reclaim the Mine as required by Utah Code Annotated 40-8-12.5 (1953, as amended).

6. Under the Utah Mine Land Reclamation Act, Title 40, Chapter 8, Section 40-8-4(15), a "small mining operation", or SMO, is defined to mean "mining operations which disturb or will disturb five or less acres at any given time." Id. Under Utah law, operators of a LMO have a legal duty to post a reclamation surety bond with the Division. Also, prior Division approval of the NOI on a LMO is mandatory. In contrast, an operator of a SMO does not have a legal duty to post a reclamation surety bond, and an SMO operator has no duty to obtain prior Division approval of the NOI.

7. If the Bowns reclaim the various disturbed roads at the Mine so that the disturbance at the Mine in fact is kept to five acres or less, the Division will be able to re-classify the Mine from an LMO to an SMO, and to regulate it as a SMO rather than an LMO. If the Bowns do not reduce the acreage, the Division must regulate the Mine as an LMO.

8. The Board has no objection if the Bowns want to reclaim to reduce the Mine size so it qualifies for the less stringent regulatory requirements imposed on an SMO, but the Board finds that the status quo is unacceptable. The Board will not allow the Bowns to continue indefinitely to operate an LMO as if it were an un-bonded, un-approved SMO.

9. After this Order is served on the Bowns, they will be deemed to have actual notice of its contents, so the failure of the Bowns to meet the October 15, 1997 deadline set forth in the Order, or to otherwise comply with this Order, will be deemed a willful and knowing violation of a Board Order, and shall subject the Bowns to all civil and criminal liability as law or equity may allow, including but not limited to the Utah Mines Land Reclamation Act, Utah Code Ann. §§ 40-8-8 (civil remedies), 40-8-9 (criminal remedies) and 40-8-14 (more civil remedies).

10. Pursuant to Utah Admin. Code R641 and Utah Code Ann. § 63-46b-6 to -10 (1953, as amended), the Board has considered and decided this matter as a formal adjudication.

11. This Findings of Fact, Conclusion of Law and Order ("Order") is based exclusively on evidence of record in the adjudicative proceeding or on facts officially noted, and constitutes the signed written order stating the Board's

decision and the reasons for the decision, all as required by the Administrative Procedures Act, Utah Code Ann. § 63-46b-10 and Utah Administrative Code R641-109.

12. Notice re Right to Seek Judicial Review by the Utah Supreme Court or to Request Board Reconsideration: As required by Utah Code Ann. § 63-46b-10(e) to -10(g) (1953, as amended), the Board hereby notifies all parties in interest that they have the right to seek judicial review of this final Board Order in this formal adjudication by filing a timely appeal with the Utah Supreme Court within 30 days after the date that this Order issued. Utah Code Ann. § 63-46b-14(3)(a) and -16 (1953, as amended). As an alternative to seeking immediate judicial review, and not as a prerequisite to seeking judicial review, the Board also hereby notifies parties that they may elect to request that the Board reconsider this Order, which constitutes a final agency action of the Board. Utah Code Ann. § 63-46b-13, entitled, "Agency review - Reconsideration," states:

"(1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review

of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3) (a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied."

Id. The Board also hereby notifies the parties that Utah Administrative Code R641-110-100, which is part of a group of Board rules entitled, "Rehearing and Modification of Existing Orders," states:

"Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of that month."

Id. See Utah Administrative Code R641-110-200 for the required contents of a Petition for Rehearing. If there is any conflict between the deadline in Utah Code Ann. § 63-46b-13 (1953, as amended) and the deadline in Utah Administrative Code R641-110-100 for moving to rehear this matter, the Board hereby rules that the later of the two deadlines shall be available to any party moving to rehear this

matter. If the Board later denies a timely petition for rehearing, the party may still seek judicial review of the Order by perfecting a timely appeal with the Utah Supreme Court within 30 days thereafter.

Now, based upon the Notice of Agency Action, testimony and evidence submitted, and the Findings of Fact and Conclusions of Law stated above, the Board hereby orders as follows:

ORDER

1. The Bowns shall comply with the Board Cessation Order issued May 28, 1997 prohibiting the removal of mineral materials from the Mine known as the Grouse Creek Quarry so long as that Mine remains an un-bonded, un-approved LMO.

2. In a desire to bring the Bowns into compliance with the law, the Board in the exercise of its sound discretion hereby orders the Bowns to make a choice and to take certain action: By no later than 4 p.m. in Salt Lake City on Wednesday, October 15, 1997, the Bowns shall, to the satisfaction of the Division, do one of two things: Either (1) reclaim and block certain disturbed roads at the Mine in compliance with this Order and the Small Mine Concept depicted on the attached Reclamation Map (Exhibit A) so as to reduce the disturbed acreage at the Mine to five acres or less or (2) post an interim reclamation surety bond (e.g., cash

deposit, certificate of deposit, corporate surety bond) in the exact amount of \$12,500 in a form satisfactory to the Division.

3. If the Bowns elect to reclaim the site by October 15, 1997 as shown on Exhibit A, and to run the Mine as an SMO, the Bowns shall:

A. Reclaim blue colored, A-designated roads by blocking the roads and ripping and seeding the first hundred feet of the respective roads.

B. Reclaim purpled colored, B-designated roads by ripping the entire road, seeding and installing water bars as appropriate.

C. Reclaim orange colored, C-designated roads. Reclamation of C roads shall consist of two types. One: Interim stabilization which includes ripping and seeding the compacted areas of the C designated roads. Two: Full reclamation which includes ripping and seeding the entire road, regrading the road where necessary.

D. No action is required at this time on the brown colored, C designated roads

E. No action at this time is required on the green colored, E designated roads.

F. Construct road blocks at the various specific locations as designated more particularly on Exhibit A.

4. All reclamation work as required in this Order shall be carried out in conformity with all applicable state and federal laws, including but not limited to Utah Admin. Code R647-4-111, entitled, "Reclamation Practices," which states:

"During reclamation, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:

1.11. The permanent sealing of shafts and tunnels;

1.12. The disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;

1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R647-4-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels have been affected by mining operations, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or minimize future damage to the hydrologic system.

3. Erosion Control - Reclamation shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. Land Use - The operator shall leave the on-site area in a condition

which is capable of supporting the postmining land use.

6. Slopes - Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.

7. Highwalls - In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.

8. Roads and Pads - On-site roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.

9. Dams and Impoundments - Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.

10. Trenches and Pits - Trenches and small pits shall be reclaimed.

11. Structures and Equipment - Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.

12. Topsoil Redistribution - After final grading, soil materials shall be redistributed on a stable surface, so as to minimize erosion, prevent undue compaction and promote revegetation.

13. Revegetation - The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover. If the premining vegetative ground cover is unknown, the ground cover of an adjacent undisturbed area that is representative of the premining ground cover will be used as a standard. Also, the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

13.12. The Division determines that the revegetation work has been satisfactorily completed within practical limits."

5. If the Bowns elect to post the interim bond of \$12,500 by no later than October 15, 1997, rather than reclaim the existing LMO down to an SMO size, the Bowns also must immediately bring the Mine into full compliance with law by filing all papers needed to secure Division approval of the LMO, and ultimately Board approval of the form and amount of the mandatory reclamation bond to replace the interim surety bond. The Division shall keep the Board advised, and shall seek an order of forfeiture of the interim bond if the Bowns fail to bring the Mine into compliance with law by no later than 45 days after October 15, 1997.

6. If the Bowns do not comply with this Order by the deadline of October 15, 1997 (i.e., they neither post the \$12,500 interim surety bond nor reclaim the roads as shown more particularly on Exhibit A), the Board hereby authorizes the Division, in consultation with the Attorney General, and in the exercise of sound discretion, to pursue all civil and criminal liability against the Bowns as law or equity may allow, including but not limited to the remedies set forth in the Utah Mines Land Reclamation Act, Utah Code Ann. §§ 40-8-8 (civil remedies), 40-8-9 (criminal remedies) and 40-8-14 (more civil remedies).

7. The Board retains continuing jurisdiction over all the parties and over the subject matter of this Cause, except to the extent said jurisdiction

SENT BY:ATTY GEN--NAT RES

26-87 ; 7:45AM ; ATTY GEN--NAT RES-

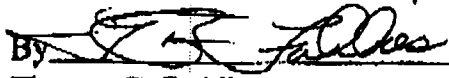
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may be divested by the filing of a timely appeal to seek judicial review of this
Order by the Utah Supreme Court.

8. The signature of the Acting Chairman on a faxed copy of this
Order shall be deemed equivalent to an original signature for all purposes.

ISSUED this 26 day of September, 1997.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

By 

Thomas B. Faddies
Its Acting Chairman

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER TO RECLAIM OR TO POST AN INTERIM SURETY for Docket No. 97-016, Cause No. M/003/031 to be mailed by certified mail, postage prepaid, this 26 day of September, 1997, to the following:

Mr. William Bown
dba Utah Building Stone Supply
842 West 400 North
West Bountiful, Utah 84087

Mr. Preston Bown
dba Utah Building Stone Supply
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Sent by Hand Delivery to:

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With Courtesy Copies to:

Lowell P. Braxton, Acting Director,
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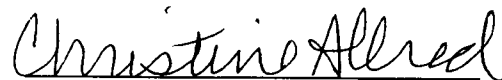
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